costs that an incumbent does not. Conversely, incumbents often incur costs that new entrants do not, such as the costs associated with retiring and replacing old equipment. The real question is whether a new entrant's costs constitute the types of entry barriers that preclude meaningful opportunities for entry. The clear and short answer to that question is no: otherwise CLECs could not and would not have deployed hundreds of switches since passage of the 1996 Act.

Finally, unbundling of switching cannot be justified on the ground that it is necessary in order to be able to use *other* elements such as loops. In particular, the contention that switching is needed in order to avoid an alleged problem with "hot cuts" must fail. Once again, this argument constitutes an attempt to avoid application of section 251(d)(2) on an element-by-element basis and instead bootstrap the unbundling of one element on the alleged need to unbundle another. If switches do not meet the impair test on their own, then they should not be unbundled. Instead, any problems associated with using non-ILEC switches in conjunction with ILEC loops, such as the alleged difficulties with "hot cuts," can and should be solved directly. Moreover, the alleged problem with "hot cuts" is highly exaggerated. Indeed, AT&T — the most vociferous proponent of this theory — actually has reviewed and approved U S WEST's coordinated hot cut process. Its claim that U S WEST inadequately performed hot cuts for AT&T in conjunction with number portability in Utah[117] is pure fantasy: *AT&T has not even purchased any unbundled loops from U S WEST in Utah, so no hot cuts have even been needed or attempted.* More generally, U S WEST has met CLEC service interval requests for loops over 90% of the time. The bottom line is that numerous CLECs have successfully

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117/ AT&T Comments at 106.

deployed and used switches in U S WEST's region and throughout the nation. Accordingly, neither hot cuts nor any of the other alleged problems listed by AT&T and others constitute the type of entry barriers — either individually or collectively — that preclude meaningful opportunities for entry.

D. Signaling/Call-Related Databases

As U S WEST and others demonstrated in their opening comments, where a CLEC obtains its own switching, signaling does not meet the standards for compulsory unbundling.[118/] The undisputed evidence before the Commission establishes that multiple CLECs have actually deployed their own signal transfer points and that signaling is available from multiple wholesale providers.[119/] As the facilities-based CLEC MGC states in its comments, "SS-7 signaling is made generally available on a national basis and in a cost-effective manner."[120/]

No commenter really disputes these facts. Indeed, most advocates of unbundled signaling are virtually silent on the issue of whether signaling meets the necessary and impair tests when a CLEC is *not* obtaining switching from an ILEC. For example, AT&T offers *no* explanation for why signaling should be unbundled where a CLEC does not use ILEC switching.[121/] Similarly, MCI WorldCom asserts that "CLECs, *especially those that use the*

118/ U S WEST Comments at 47-48.

119/ *See, e.g., UNE Fact Report* at V-2 to V-3.

120/ MGC Comments at 31.

121/ *See* AT&T Comments at 110.

ILEC's switch to provide local service, have no option but to obtain these signaling elements from the ILEC."[122] Yet the two sentences of justification that follow this claim discuss only the reasons why a CLEC using an ILEC switch must also use ILEC signaling. Thus, the record before the Commission can lead to only one conclusion: unbundling of signaling and call-related databases is unjustifiable where a CLEC obtains switching from a non-ILEC source.

In any case, the Commission should certainly reject CLEC attempts to expand the definition of this element to include greater AIN capabilities. As the Commission is well aware from the voluminous record in its recently terminated *Intelligent Networks* docket,[123] providing access to AIN capabilities raises complex issues of network integrity and technical feasibility:

> We recognize that issues surrounding third party access to IN are complex and must be accompanied by a careful consideration of network reliability issues to protect the network against harm. We note that the [Network Reliability Council] has stated that *as future networks evolve to support multiple-provider environments, the complexity of potential reliability problems grows as it becomes more difficult to isolate network problems and contain them.*[124]

Nothing in the record in this proceeding begins to address these issues even though they clearly are implicated by commenters' proposals.

For example, the suggestion that ILECs should unbundle AIN triggers[125] poses serious problems with respect to network integrity. AIN triggers interact with the Service

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122/ MCI WorldCom Comments at 59 (emphasis added).

123/ *In the Matter of Intelligent Networks*, Order, 13 FCC Rcd 23680 (1998).

124/ *In the Matter of Intelligent Networks*, Notice of Proposed Rulemaking, 8 FCC Rcd 6813, 6816 ¶ 19 (1993) ("*AIN Notice*") (emphasis added).

125/ *See* Low Tech Designs Comments at 10-12.

Control Point ("SCP") at a very fundamental level, and unanticipated interactions between the triggers and the SCP can lead to wholesale switch failures. To avoid such catastrophic events, carriers such as U S WEST use different types of mediation between the AIN instructions and network facilities. Indeed, the Commission itself has recognized that mediation is needed "to ensure network reliability — avoiding network failure, and also ensuring that services perform as designed, and that customers receive the features they order."[126/] Providing unbundled access to AIN triggers would make such mediation technically infeasible, creating potential threats to the network's integrity.

Even if further AIN unbundling did not raise complex technical and reliability issues, the record would provide no basis for expanded unbundling of AIN capabilities. Many AIN features are proprietary in nature or involve proprietary information and are therefore subject to the necessary standard. No CLEC has come close to meeting this standard. Indeed, given that CLEC demand to date for AIN capabilities as a UNE has been virtually non-existent, unbundled access to AIN capabilities clearly is not necessary. This fact, coupled with the technical feasibility issues involved, make clear that the Commission should do nothing to expand unbundling of AIN.

E. Interoffice Transmission Facilities

The comments confirm U S WEST's contention that nonincumbents are able to deploy competitive fiber optic transport facilities in virtually any moderately dense market, and that nonincumbents have, in fact, deployed so much capacity in these markets that bandwidth has

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126/ *AIN Notice*, 8 FCC Rcd at 6813 ¶ 5.

become a commodity product.[127] Contrary to the suggestion of some commenters that these are simply intercity facilities,[128] this competitive deployment includes a massive amount of *local* fiber connecting incumbent LEC end offices. For example, Metromedia Fiber Network Services reports that it will have 810,000 fiber miles of *intra*-city high-bandwidth transport operational within the next two years, connecting over a hundred central offices in Bell Atlantic's region alone.[129]

The CLECs themselves concede that they have been able to take great advantage of these competitive facilities. MCI WorldCom boasts that it self-provisions transport to over four hundred incumbent LEC end offices, and purchases transport from other CLECs and CAPs to over 1200 more.[130] Even it is forced to concede that "MCI WorldCom and other CLECs would not be impaired if they were denied access to ILEC transport as an unbundled network element" in these locations.[131] Similarly, AT&T and Covad admit that they have been able to

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127 *See, e.g.*, Ohio PUC Comments at 10 (finding that, throughout its jurisdiction, "dedicated transport is available . . . to CLECs outside ILEC's network both through other non-incumbent carriers (CAPs, IXCs, and various CLECs) and through self-provisioning); Qwest Comments at 2 (describing its "18,500-mile, 150-city fiber optic network"); Sprint Comments at 31 (noting that the market for competitive transport is a decade old); UTC Comments at 3 (noting that as of *1997*, utilities alone had deployed 40,000 route miles of fiber optic cable representing 750,000 fiber miles of capacity).

128 *See, e.g.*, Qwest Comments at i, 73-74.

129 *See* Metromedia Comments at 1-2.

130 *See* MCI WorldCom Comments at 64.

131 *See id.* at 65.

shift almost a fifth of their transport business to competitive providers.[132] And the competitive transport providers themselves make clear that they can and do provide this capacity to CLECs in whatever form they desire, either as finished transport service or dark fiber.[133]

The CLECs' only answer to these facts is an attempt at misdirection. Even as they concede that competitive interoffice transport is available in a significant number of markets — and that they actually use these competitive providers whenever possible — they point to some remainder of markets where competitive facilities may not exist, and argue that transport must be unbundled *nationally* if CLECs are to be able to duplicate the reach and configuration of incumbents' transport networks.[134] Leaving aside the fact, noted above, that no rational CLEC starting from scratch would actually want to *duplicate* the incumbents' ubiquitous networks, the CLECs' argument is a non-sequitur. If there are markets where competitive transport options do not exist, then the proper rule is to unbundle transport in those markets only. As the competitive transport providers warn the Commission, an overinclusive rule requiring TELRIC-priced unbundling in *every* market will serve only to throttle competitive deployment in those markets where it has occurred or potentially can occur.[135]

132/ *See* AT&T Comments at 122; Covad Comments at 45.

133/ *See, e.g.*, Qwest Comments at 90; UTC Comments at 1, 3.

134/ *See, e.g.*, ALTS Comments at 50; AT&T Comments at 111-121; Covad Comments at 45; MCI WorldCom Comments at 63, 65.

135/ For example, the UTC, representing utilities entering the telecommunications market, warns the Commission that requiring the unbundling of incumbent LECs' dark fiber at TELRIC will destroy all potential for profit in this highly competitive market. *See* UTC Comments at 3.

Adopting such an overinclusive rule and incurring these costs is especially inappropriate when it is relatively simple to separate the markets where unbundling is needed from those where it is not. As U S WEST and other incumbents demonstrated in their opening comments, the Commission can adopt a uniform national rule excusing incumbents from having to unbundle interoffice transport in any wire center that serves twenty thousand or more loops and has one or more collocated CLECs. Competitive fiber has been deployed in at least 72 percent of the wire centers in U S WEST's region having these characteristics, and there is every reason to think that similar competitive facilities can be deployed in the other wire centers, given their equivalent densities.[136/] At the same time, this rule would lift unbundling obligations only in the densest 16 percent of U S WEST's wire centers located in big cities such as Denver, Phoenix, and Seattle; competitors would still have access to unbundled transport in the remaining 84 percent of U S WEST's wire centers. *See* U S WEST at 51. The CLECs' ability to provide service is not "impair[ed]" by a rule such as this one that limits unbundling (and the social costs unbundling imposes) to those markets where competitive transport alternatives may be slower to develop.

F. Operator Services/Directory Assistance (OS/DA)

A number of non-ILEC parties effectively concede that ILEC operator services and directory assistance platforms do not meet the section 251(d)(2) standard.[137/] These parties

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136/ For example, competitive transport facilities have been deployed in *90* percent of the wire centers in SBC's region having these characteristics. *See* U S WEST Comments at 50.

137/ *See, e.g.*, MGC Comments at 31; Sprint Comments at 28; Ohio PUC Comments at (continued...)

recognize what the *UNE Fact Report* conclusively demonstrates: that CLECs can readily self-provision the inputs needed to provide OS/DA service and that numerous CLECs today purchase OS/DA services on a wholesale basis.[138/] As MGC Communications states in its comments:

> MGC and other CLECs may purchase Operator Services and Directory Assistance Services from a number of vendors offering cost effective national-in-scope alternatives to the ILECs product offering. MGC purchases Operator Services and Directory Assistance from several vendors, several of when [sic] which include non-ILECs. Sufficient competitive markets exist for this product and it should therefore be retired as a UNE.[139/]

AT&T and MCI WorldCom claim that CLECs purchasing unbundled ILEC switching need unbundled access to ILEC OS/DA services because a CLEC cannot obtain the customized routing necessary to route calls from an ILEC switch to the CLEC's own OS/DA platform.[140/] This argument is simply a red herring. Where a CLEC obtains switching from an ILEC, the ILEC is already required to also provide customized routing.[141/] On the other hand, where a CLEC does not take switching from the ILEC, customized routing is simply unnecessary since the CLEC switch can route calls to the CLEC's own OS/DA platform. Thus, customized routing poses no obstacle to obtaining OS/DA services from non-ILEC sources.

137/ (...continued)
11-13; ALTS Comments at 35 (declining to list OS/DA as element the Commission should unbundle; NEXTLINK Comments at 14-15 (same); *cf.* Qwest Comments at 87 ("It appears that a wholesale market is developing for OS/DA, and that the impairments to interchangeability may be relatively easy to remove.")

138/ *See UNE Fact Report* at IV-1 to IV-10.

139/ MGC Comments at 31.

140/ *See* AT&T Comments at 126-28; MCI WorldCom Comments at 73-74.

141/ *See Local Competition Order*, 11 FCC Rcd at 15709 ¶ 418.

A number of parties make a more moderate request: that ILECs be required to unbundle their directory listings, but not their entire OS/DA platforms.[142/] Even these requests are flawed, however, because section 251(b)(3) already requires LECs to provide directory listings to other LECs on a nondiscriminatory basis. Indeed, ILECs themselves increasingly must rely on section 251(b)(3) to obtain directory listings for the growing number of CLEC customers. Furthermore, third-party DA suppliers hardly need the artificial economic boost of obtaining ILEC directory listings at TELRIC prices pursuant to section 251(c)(3). ILECs are rapidly losing market share in DA services as retail and wholesale customers (*e.g.*, IXCs) are choosing either to self-provision or to purchase DA service from such third-party suppliers.[143/] Indeed, U S WEST's wholesale IXC call volume has dropped 90 percent since 1994. And MCI WorldCom's claim that CLECs need ILECs to provide their directory listings in bulk[144/] is an irrelevant distraction: U S WEST already provides its DA database to CLECs in a bulk format. What MCI WorldCom and others really want is for ILECs to provide their listings at TELRIC prices, but as noted above, no policy rationale would justify requiring ILECs to sell their listings to thriving competitors at TELRIC prices.

Finally, the Commission does not have authority under section 251(c) to require ILECs to unbundle their DA facilities for entities such as Teltrust that are not

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142/ *See, e.g.*, California PUC Comments at 7; Metro One Comments at 5; Sprint Comments at 28 n.19.

143/ *See UNE Fact Report* at IV-5 to IV-6.

144/ *See* MCI WorldCom Comments at 42.

telecommunications carriers.[145] Section 251(c)(3) is quite clear that the duty to provide unbundled network elements runs only to "requesting telecommunications carrier[s]," and the Common Carrier Bureau recently affirmed this position when it squarely rejected a claim by INFONXX that it was entitled to NYNEX's directory assistance database under section 251(c).[146]

G. DSL and Packet Switched Services

The comments that have been filed largely support U S WEST's demonstration that the packet switches and electronics used for advanced services are freely available to CLECs from vendors, easily scalable, and readily deployable given a few basic inputs from incumbents (such as collocation). The Information Technology Industry Council, representing computer and consumer electronics manufacturers and vendors, notes as follows:

> ILECs have no legacy advantage with respect to the installation and use of advanced services electronics such as [DSLAMs]. . . .
>
> [T]he ILECs' competitors can acquire and install equipment for advanced services on a relatively equal footing with the ILECs. The relevant electronic equipment is produced by numerous vendors, establishing a competitive market that can effectively discipline prices, provisioning, and other service terms for the foreseeable future. As a general matter, the collocation of DSLAMs in an ILEC central office is not an expensive, capital

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145/ *See* Teltrust Comments at 7-10.

146/ *See INFONXX, Inc., Complainant, v. NYNEX, Defendant*, File No. E-97-16, Memorandum Opinion and Order, 13 FCC Rcd 10288, 10293-95 ¶¶ 11-12 (1998) ("[W]e find no Section 251 obligation for NYNEX to provide INFONXX with nondiscriminatory access to its DA database . . . .").

> intensive exercise. . . . Thus the equipment is readily and practically available to ILECs and competitors alike.[147]

Even ALTS and some of its member competitive DSL providers are forced to agree.[148] Indeed, the CLECs' unpersuasive attempt, discussed above, to stretch the definition of the loop element to cover DSLAMs is a tacit acknowledgment that these electronics could never meet the "impair" standard considered on their own merits.

The commenters who insist on access to DSLAMs and advanced services electronics provide no real justification for their request. For example, MCI WorldCom and Qwest generically cite economies of scale for requiring access to incumbents' DSLAMs,[149] even though MCI WorldCom acknowledges, in the very same paragraph, that DSLAMs are scalable

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147 Information Tech. Indus. Council Comments at 6-7 (footnotes deleted).

148 *See, e.g.*, ALTS Comments at 18 n.40 ("Currently, DSLAMs are 'off the shelf' technology available to ILECs and all other carriers from a number of vendors."); NorthPoint Comments at 18 ("Where competitive LECs enjoy access to loops and collocation, any competitive LEC can provide the necessary infrastructure (DSLAMs and packet switches) required to provide advanced services."); Rhythms NetConnections Comments at 26 (conceding that DSLAMs "would satisfy the 'necessary' and 'impair' standards" only in the "narrow circumstances" where the ILEC inputs are unavailable).

149 *See* MCI WorldCom Comments at 50; Qwest Comments at 20, 64. Qwest quotes out of context several passages from U S WEST's advanced services comments noting that ILECs "are uniquely well positioned among common carriers to bring advanced services to the mass market, because their networks reach into virtually all communities — big and small, urban and rural." Qwest Comments at 20 (quoting Comments of U S WEST Communications, CC Dkt. No. 98-147 at 16-17 (filed Sept. 25, 1998). It is true that incumbents have proven more willing to serve rural and residential customers than CLECs such as Qwest, and that their networks extend further into smaller communities than Qwest is willing to go. But this is a network advantage in *transport* facilities, not DSLAMs and packet switches. (It is also an advantage CLECs can share, since U S WEST is not proposing to stop unbundling transport in these markets.) It would cost an incumbent and a new entrant exactly the same to deploy a DSLAM in a rural central office. The incumbent has no significant economies of scale with these electronics by virtue of its geographic reach, contrary to Qwest's suggestion.

and "not extraordinarily expensive: a CLEC can purchase off-the-shelf for about $8,000 to $20,000 a DSLAM capable of serving 200 to 300 lines."[150/] Similarly, AT&T and MCI WorldCom complain about allegedly insurmountable delays and difficulties CLECs face in collocating their own DSLAMs in incumbent facilities,[151/] even though these supposed obstacles have not stopped CLECs from rolling out competitive xDSL services far faster even than the incumbents have — least of all, MCI WorldCom itself, which reports that it will increase its DSL footprint from its current 400 ILEC central offices to 1,000 offices by the year's end.[152/] More generally, if there are any particular incumbent network arrangements that do in fact present special challenges for deploying competitive DSL-based services, the Commission should continue to address those arrangements directly, as it has done in its current advanced services dockets.[153/] There is no reason (or legal basis) for unbundling obligations to creep up the food chain from the necessary incumbent inputs, such as loops and collocation, to facilities that are competitively available from numerous third-party vendors, such as DSLAMs and packet switches.

150/ MCI WorldCom Comments at 50.

151/ *See* AT&T Comments at 80-81; MCI WorldCom Comments at 50

152/ *See* Charles Dubow, *(MCI) World (Com) on a String*, Forbes, June 3, 1999 (*available at* <http://www.forbes.com/tool/html/99/jun/0603/feat.htm>, *visited* June 10, 1999). As evidence of how rapidly CLECs have been able to deploy competitive DSL *without* receiving any electronics at all from the incumbents, just six months ago, MCI WorldCom represented to the Commission that it was providing DSL in only 54 ILEC central offices. *See* Joint Comments of MCI Communications Corp. and WorldCom, Inc., CC Docket No. 98-146, at 18 (filed Sept. 14, 1998).

153/ *See generally Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. Mar. 31, 1999).

In addition, several commenters use this proceeding as a platform to seek the unbundling of new generic data network elements — packet switching, packet transport, and virtual circuits on incumbent frame and ATM networks — that are not tied to the xDSL services the Commission considered in its *Advanced Services Order*.[154/] The commenters have not, however, shown as a legal matter that these elements are even potentially subject to unbundling. A carrier's unbundling obligations with respect to a facility turn on the services for which that facility is used. A party is subject to section 251(c)(3) unbundling duties only where and to the extent it is acting as an "incumbent *local exchange carrier*," 47 U.S.C. § 251(c) (emphasis added); in turn, a party is a "local exchange carrier" only to the extent it is providing "telephone exchange service" or "exchange access." *Id.* § 153(26). Moreover, a CLEC is entitled to obtain unbundled network elements *only* if it requests them "for the provision of a telecommunications service." *Id.* § 251(c)(3).

U S WEST does not currently use packet switches, packet transport, or frame or ATM virtual circuits in its provision of "telephone exchange service" or "*exchange* access" over the PSTN.[155/] U S WEST thus is not acting as an incumbent "local exchange carrier" when it

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154/ *See, e.g.*, ALTS Comments at 72-75; CompTel Comments at 37-38; e.spire Comments at 29-33; Qwest Comments at 73, 80-91.

155/ "Telephone exchange service" is defined as either (A) "intercommunicating service" that stays "within" a single telephone exchange or local system of exchanges, and that "is covered by the exchange service charge," or (B) "comparable" service. 47 U.S.C. § 153(47). U S WEST's frame and ATM services do not use or stay "within" the PSTN "exchange," do not involve any-to-any local "intercommunicati[on]," are not included in the "exchange service charge," and are not market substitutes or functional equivalents for the traditional telephone exchange services described in the first half of the definition.

"Exchange access" is "the offering of access to telephone exchange services or (continued...)

provides packet switching and frame or ATM services, and it is therefore not subject to section 251(c)(3) unbundling obligations for the facilities used exclusively for these services. Moreover, the CLECs in this proceeding do not explain whether they desire these data elements for information or telecommunications services — they simply want the elements available generically, even though they may legally be obtained only "for the provision of a telecommunications service."[156/] Indeed, IP voice carriers such as Qwest cannot now claim that the service offerings for which they would use unbundled packet switching are telecommunications services without abandoning their position that they do not owe access charges on this traffic.[157/]

Even if the commenters could clear these legal hurdles, they have not made — and cannot make — the *factual* showing necessary to justify unbundling under the "impairment" standard. The commenters present nothing more than platitudes and generalities in support of their requests. Instead of providing facts to justify their request for packet switching (and packet transport, which, in a distributed-switching network, is the same thing), Qwest and CompTel simply assert that the Commission must keep the definition of a switch current as switching

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155/ (...continued)
facilities for the purpose of origination or termination of *telephone toll services*." *Id.* § 153(16) (emphasis added). "Exchange access" is distinct from "information access" under the Act. *See id.* § 251(g). U S WEST's frame and ATM services are not used to originate and terminate telephone toll calls.

156/ 47 U.S.C. § 251(c)(3).

157/ *See, e.g.*, Memorandum from Qwest Communications Corp. to FCC 7-8 (Feb. 8, 1999); *U S WEST Communications, Inc. v. Qwest Communications Corp.*, Docket No. 99F-141T (Colo. PUC).

technology evolves.[158] But this assertion completely misses the fact that incumbents do not use circuit and packet switches the same way in their networks; indeed, as just noted, they do not currently use packet switches in the PSTN *at all*. Similarly, ALTS and e.spire give no reason why they should receive section 251(c)(3) unbundled access to frame relay and ATM virtual circuits, other than that they would prefer to pay a TELRIC price rather than the full tariffed price that would normally apply to these free-standing, finished services.[159] But the denial of an opportunity to engage in price arbitrage for a finished service is not an "impairment" that can justify unbundling.

These commenters cannot make the factual case for unbundling these packet, frame, and ATM elements because incumbents are plainly not the sole, or even primary, source for these elements. Incumbent LECs (at least the BOCs) are latecomers to the robust and highly competitive packet-switched services market.[160] ISPs and CLECs have deployed far more packet switches than the incumbents have.[161] For the frame and ATM services that the CLEC commenters covet, the incumbent LECs' market share is far below that of AT&T, MCI WorldCom, and Sprint, the three market leaders. IDC surveys found that in mid-year 1998, those three companies (including acquisitions such as TCG and CompuServe) had a 74 percent

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158/ *See* Qwest Comments at 73, 81; CompTel Comments at 37-38, 41-42.

159/ *See* ALTS Comments at 74-75; e.spire Comments at 32 & n.64.

160/ As a practical matter, U S WEST could not provide packet-switched networking services until the Commission waived the Computer II rules to permit the company to perform protocol conversion in connection with packet switching on an unseparated basis and jointly market these services. *See Mountain States Tel. & Tel. Co. et al. Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations*, 2 FCC Rcd 2040 (1987).

161/ *See UNE Fact Report* at I-33.

market share in frame relay services measured in revenues, compared to 15 percent for the BOCs and GTE.[162/] For ATM services, AT&T, MCI WorldCom, and Sprint collectively had a 90 percent market share (measured in revenues), compared to 8 percent for the BOCs and GTE.[163/] There have been no practical barriers to entry in the packet-switched services market, and nonincumbent providers have been able to achieve clear dominance in this market *without* unbundled access to the incumbents' networks.

As a final matter, U S WEST notes that AT&T's own conduct since the initial comments were filed gives the lie to its nonchalant claims in this proceeding that unbundling obligations can be imposed on advanced service facilities without incurring any social costs in foregone investment and service deployment. Now that a federal court in Portland, Oregon has ruled that AT&T can be required to open up its cable infrastructure to Internet service providers that compete with its Excite@Home affiliate, AT&T has unceremoniously declared that it cannot and will not offer cable-based advanced services in this market.[164/] Tellingly, AT&T's about-face on deployment was provoked by the potential application of unbundling rules far less burdensome than the ones AT&T is demanding for its Title III competitors: AT&T is not limited to charging TELRIC-based prices for access to its network, as the incumbent LECs are.

[162/] International Data Corp., *Frame Relay Service Market Share Assessment and Forecast*, Rep. 17566 (Jan. 19, 1999). Measured in terms of the number of ports in service, the three IXCs had a 59 percent market share, compared to 29 percent for the BOCs and GTE. *Id.*

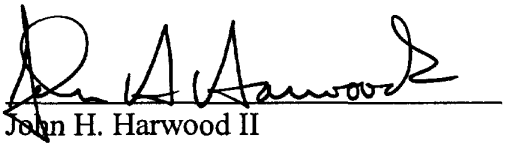
[163/] International Data Corp., *ATM Services: Market Share Assessment and Forecast*, Rep. 17896 (Jan. 26, 1999). Measured in terms of the number of ports in service, the three IXCs had 63 percent of the market, compared to 35 percent for the BOCs and GTE. *Id.*

[164/] *See Other Cities May Impose Open Access After Portland Decision*, Comm. Daily at 3 (June 8, 1998).

CONCLUSION

For the foregoing reasons, the Commission should adopt the principles, presumptions, and other mechanisms described above and in U S WEST's initial comments to implement section 251(d)(2) of the 1996 Act.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 1999 I caused true copies of the foregoing Reply Comments of U S WEST Communications, Inc. to be served by first class mail, postage pre-paid upon the following:

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